

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

JAMES S. GORDON, JR., Franklin
County, Washington,

Plaintiff,

-vs-

COMMONWEALTH MARKETING GROUP,
INC., AND JOHN DOES, 1-10,

Defendants,

-vs-

IMG ASSOCIATES, LLC, a Georgia
limited liability company,

Third Party Defendant.

NO. CV-08-5074-LRS

ORDER DENYING PLAINTIFF'S
MOTION FOR RECONSIDERATION

BEFORE THE COURT is Plaintiff James Gordon's Motion For
Reconsideration Under FRCP 60, Ct. Rec. 99, filed on November 19,
2009.

On November 9, 2009, the Court entered an "Order Granting Summary
Judgment for Defendants," Ct. Rec. 91, and a "Judgment," Ct. Rec. 92.
The Court construes pro se Plaintiff's motion for reconsideration as a
motion for relief of judgment or order pursuant to Federal Rules of
Civil Procedure Rule 60(b).

1 Plaintiff Gordon argues that he "was not afforded access to this
2 court that defendants enjoyed." Plaintiff further argues that his
3 motions were ignored and that defendants' summary judgment motion did
4 not allow him to obtain discovery, which was unfair to him. Plaintiff
5 also raises various arguments pertaining to the Court's case
6 management, legal analysis and Defendants' alleged fraudulent conduct.
7 Finally, Plaintiff appears to reargue that defendants allegedly have
8 no right to send commercial email. Ct. Rec. 99.

9 Defendants respond, in opposition, that Plaintiff fails to
10 identify any proper basis for relief under Rule 60(b) of the Federal
11 Rules of Civil Procedure. Further, Plaintiff ignores the dispositive
12 effect of *Gordon v. Virtumundo, Inc.*, 575 F.3d 1040 (9th Cir. 2009)
13 ("Virtumundo"). The Court agrees with Defendants.

14 Rule 60(b) "provides for extraordinary relief and may be invoked
15 only upon a showing of exceptional circumstances." *Engleson v.*
16 *Burlington Northern R. Co.*, 972 F.2d 1038, 1044 (9th Cir. 1992)
17 (citations omitted); *Ackermann v. United States*, 340 U.S. 193,
18 199-201, 71 S. Ct. 209, 212-13, 95 L.Ed. 207 (1950); *Boyd v. Bulala*,
19 905 F.2d 764, 769 (4th Cir. 1990). As a threshold condition to any
20 relief under the Rule, Plaintiff must assume the burden of showing a
21 meritorious defense or claim. *Compton v. Alton Steamship Co.*, 608
22 F.2d 96, 102 (4th Cir. 1979) (citations omitted). Here, the Court
23 entered judgment against Plaintiff because he lacked standing for his
24 CAN-SPAM¹ Act claims and found that his state claims under the

25
26 ¹Controlling the Assault of Non-Solicited Pornography and Marketing
("CAN-SPAM Act").

1 Commercial Electronic Mail Act ("CEMA"), Chapter 19.190 RCW, were
2 preempted as Gordon did not adequately plead to allege fraud as part
3 of his CEMA claims.

4 Plaintiff acknowledges (Ct. Rec. 99, p. 9) that he "was not ready
5 to argue or plead, previously . . ." (matters related to fraud). He
6 now asks the Court to effectively reopen his case. However, to do so,
7 this Court would have to ignore serious jurisdictional and standing to
8 sue issues as well as the legal requirements imposed by FRCP 60.

9 Importantly, as the Ninth Circuit Court of Appeals in *Virtumundo*
10 held, Gordon lacks standing as a bona fide Internet access service
11 provider suffering appropriate adverse effects. In the current motion
12 under Rule 60(b), Plaintiff has not demonstrated any errors in the
13 previous ruling(s) nor has he raised any other reason justifying
14 relief from the operation of the judgment or that he even has
15 standing.

16 The Court has reviewed the file, pending Motion, and briefing
17 thereon, and is fully informed. Accordingly, **IT IS ORDERED** that
18 Plaintiff's Motion For Reconsideration Under FRCP 60, **Ct. Rec. 99**,
19 filed on November 19, 2009, is **DENIED**.

20 **IT IS SO ORDERED.** The District Court Executive is directed to
21 enter this Order, and provide copies to counsel and *pro se* plaintiff.

22 **DATED** this 29th day of December, 2009.

23
24 **s/Lonny R. Suko**

25 _____
LONNY R. SUKO
CHIEF UNITED STATES DISTRICT JUDGE